

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No.241 of 2001
(Old No. 1467 of 1985)

Chunnu alias Chaman Lal
R/o Daak Patthar,
Police Station Vikas Nagar,
District Dehradun.

.....Appellant

Versus

The State

.....Respondent.

Ms. Anup Kumar Verma, advocate holding brief of Mr. C.D. Bahuguna,
Advocate for the appellant.
Mr. G.S. Sandhu, learned A.G.A. for the respondent State.

Hon'ble Prafulla C. Pant, J.

This criminal appeal, preferred under Section 374(2) of Code of Criminal Procedure, 1973 (for brevity hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 26.04.1985, passed in Sessions Trial No. 82 of 1984, by learned Additional Sessions Judge, Dehradun, whereby appellant Chunnu @ Chaman Lal is convicted under Section 376 of the Indian Penal Code, 1860 (for brevity hereinafter referred as I.P.C.) and sentenced to rigorous imprisonment for a period of five years.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that P.W. 1 Ms. 'S' [name is being kept secret in the spirit of Section 327 of the Code of Criminal Procedure, 1973], a minor girl, used to live with her mother P.W. 2 Smt. Kshama Sharma in quarter No.

382, Yamuna Colony, Dak Patthar, police station Vikas Nagar, District Dehradun. On 21.07.1984, P.W. 1 Ms. 'S' along with her mother and younger brother (aged 4-5 years) were sleeping in their quarter when, at about 11:00 P.M., when it was raining, accused Chunnu @ Chaman Lal (appellant) along with co-accused Santosh and Sunder Singh came in the aforesaid quarter and knocked the doors. Apprehending some untoward incident the inmates refused to open the doors. On this accused disconnected the electric connection and threatened the inmates that they would be killed, if doors are not open. The accused entered into the room and forcibly took Ms. 'S' outside in a toilet. Co-accused Santosh caught hold of Smt. Kshama Sharma (P.W. 2) and accused Chunnu @ Chaman Lal closed her mouth by keeping his hand over it so that she may not shout. There was electric light near the quarter. Accused / appellant Chunnu @ Chaman Lal committed rape on the P.W. 1 Ms. 'S' Meanwhile, when he was committing said offence, the prosecutrix got opportunity and she shouted for help. On this, neighbours A.K. Sharma, M.L. Jain, Paras Ram Dubey, P.W. 5 Kamal Kishore, Ram Prakash Mishra and others reached there. With the help of these witnesses, accused were apprehended, on the spot. Smt. Kshama Sharma got lodged the First Information Report (Ext. A -1), at about 1:15 A.M., with the police outpost, Dak Patthar, where a check report (Ext. A -11) was prepared and entry was made in the general diary, a copy of which is Ext. A -2. The crime was registered against the accused persons and investigation started. P.W. 3 Dr. Meena Bhatt medically examined the victim Ms. 'S' on 22.07.1984, at about 6:05 A.M. On that very day, P.W. 4 Dr. D.C. Bhatt, examined

injuries on the person of Smt. Kshama Sharma, at about 11:15 A.M. Injuries on the person of Chunnu @ Chaman Lal (appellant) were also examined by Dr. D.C. Bhatt (P.W. 4). On completion of investigation, P.W. 6 Sub Inspector K.S. Solanki, submitted charge sheet (Ext. A –10) against the accused along with site plan (Ext. A –9) and other papers.

4) It appears that the Magistrate concerned, on receipt of the charge sheet, after giving necessary copies to the accused person, as required under Section 207 of the Cr.P.C. committed the case to the court of Sessions, for trial. The learned Additional Sessions Judge to whom the case was made over for trial, after hearing the prosecution and the defence, framed charge of offence punishable under Section 376 of I.P.C., against accused / appellant Chunnu @ Chaman Lal. Other accused were charged with the offence punishable under Section 376 read with Section 34 of I.P.C. All the three accused pleaded not guilty and claimed to be tried. On this prosecution got examined P.W. 1 Ms. 'S' (victim); P.W. 2 Smt. Kshama Sharma (informant and mother of the victim), P.W. 3 Dr. Meena Bhatt, P.W. 4 Dr. D.C. Bhatt; P.W. 5 Kamal Kishore Sharma (turned hostile) and P.W. 6 Station Officer Solanki (Investigating Officer). Apart from this, court witness No. 1 D.C. Awasthi, the Magistrate, who recorded the statement of the victim under Section 164 of Cr.P.C. was also examined. The oral and documentary evidence was put to the accused persons, as required under Section 313 of Cr.P.C. Appellant Chunnu @ Chaman Lal in reply to the questions has alleged that policemen had enmity with him and for this reason the

police has falsely implicated him in the crime. No evidence was adduced in defence. The trial court, after hearing the parties, found accused / appellant Chunnu @ Chaman Lal guilty of the offence punishable under Section 376 of I.P.C., and after hearing him on sentence, sentenced the accused / appellant to rigorous imprisonment for a period of five years. Other two accused were given benefit of doubt, and were acquitted of the charges framed against them, by the trial court. The convict Chunnu @ Chaman Lal, aggrieved by said judgment and order dated 26.04.1985, preferred this appeal before the Allahabad High Court in the year 1985, from where it has been received by transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) Before further discussions, it is pertinent to mention here, the medical reports relating to the witnesses and accused of this case. P.W. 3 Dr. Meena Bhatt, who examined the victim Ms. 'S', on 22.07.1984, at about 6:05 A.M., has recorded following injuries and observation in her medical report (Ext. A -4):

- (i) ***An abrasion 0.5 cm X 0.2 cm on the 12th thoracic vertebra.***
- (ii) ***A small abrasion 0.2 cm X 0.2 cm on the left back 1.5 cm lateral to 11th thoracic vertebra.***
- (iii) ***An abrasion 0.2 cm X 0.2 cm, 6 cm lateral to the Tro on the left back.***
- (iv) ***An abrasion 0.5 cm X 0.2 cm on the back left side, 7 cm lateral to T 10.***
- (v) ***An abrasion 0.5 cm X 0.2 cm on left back, 10 cm lateral to T 10.***

(vi) *An abrasion 3 cm X 2 cm on scorum.*

(vii) *P/V Examination.*

An abrasion 1 cm 0.5 cm on left vulva.

Hymen ruptured. Margins lacerated.

(viii) *Scrub from P / V examined and found
spermatozoa non motile on microscopic
examination.*

6. P.W. 2 Smt. Kshama Sharma (informant) was also medically examined relating to injuries received by her in the incident recorded on 22.07.1984, at about 11:15 A.M. P.W. 4 Dr. D.C. Bhatt, the Medical Officer, found following injuries on her person:

(i) *An abrasion 1 cm X 0.5 cm on the right side of neck situated 2 cm above the right sternoclavicular joint.*

(ii) *An abrasion 1 cm X 0.5 cm on the right sternocleidomastoid joint.*

(iii) *An abrasion 8 cm X 0.5 cm on the lateral side of right upper arm.*

(iv) *Complaint of pain on the right chest.*

(v) *Abrasion 3 cm X 0.2 cm on the front of left forearm near wrist joint.*

(vi) *Abrasion 4.5 cm X 0.2 cm on the mid of right upper arm.*

The above injuries are recorded in Ext. A –8, by the Medical officer.

7) P.W. 4 Dr. D.C. Bhatt also medically examined injuries on the person of accused / appellant Chunnu @

Chaman Lal, on 22.07.1984, at about 5:45 A.M., and observed the injuries recorded in Ext. A –5, as under:

- (i) *An abrasion on right chest 4 cm X 0.5 cm, 2 cm medical to left nipple.*
- (ii) *An abrasion 2.5 cm X 0.5 cm on the front left arm situated 13 cm below the left shoulder joint.*
- (iii) *A contusion 5 cm X 1.5 cm on the lateral side of left arm, 9 cm below left shoulder joint.*
- (iv) *An abrasion 2 cm X 1.5 cm on the front of left lower leg, 9 cm below the knee.*
- (v) *An abrasion 4.6 cm X 0.5 cm on the front of left lower leg, 14 cm below the knee.*
- (vi) *An abrasion 1 cm X 0.5 cm horizontally on the lateral side of right lower leg, 9 cm below the knee.*

8) P.W. 1 Ms. 'S', prosecutrix, has stated on oath that she is 16 years old. The witness has also stated on oath that on 21.07.1984, at about 11:30 P.M., accused Chunnu @ Chaman Lal committed rape on her in the toilet, after taking her there from her room. P.W. 2 Smt. Kshama Sharma has corroborated the entire prosecution story, as mentioned earlier. Statements of these witnesses are supported by the medical reports, quoted above. P.W. 5 Kamal Kishore, though, declared hostile, as he did not fully support the prosecution story, has admitted that on 21.07.1984, at about 11:30 P.M., he was woken up by A.K. Sharma as some miscreants have come in the colony. As such, to some extent, this witness also corroborates the prosecution story, that some incident did take place in that night, in his

neighbourhood. The First Information report (Ext. A –1) read with the check report and the extract of the general diary, clearly shows that the accused Chunnu @ Chaman Lal was arrested on the spot, with the help of the witnesses and was handed over to the police. As such this Court, after going through the evidence on record, agrees with the findings of the trial court, that the prosecution has been successful in proving the charge that Chunnu @ Chaman Lal (appellant) committed rape on the victim P.W. 1 Ms. ‘S’.

9) In the appeal, only following four grounds are taken to assail the impugned judgment. The same are as under:

- “1) Because, the conviction and sentence is against the weight of evidence, on record.
- 2) Because, the conviction and sentence is contrary to law.
- 3) Because, the conviction and sentence is too severe.
- 4) Because, the appellant was on bail during his trial in court below.”

10) As far as the ground No. 4 is concerned, merely for the reason that the appellant was on bail before the trial court, conviction and sentence cannot be said to be illegal. He has already been given benefit of said fact by enlarging him on bail by the appellate court, during the period of this appeal.

11) As far as, the ground No. 3 is concerned, five years rigorous imprisonment under Section 376 of I.P.C., cannot be said to be severe, as minimum sentence itself, is seven years. As such, rather, the sentence is lenient one. As to the

ground No. 1 and 2, learned counsel for the appellant, failed to show to this Court, how the conviction and sentence is against the law or against the evidence on record. This Court has already quoted above, the injuries found on the person of the victim, injuries found on the person of the eyewitness and injuries found of the person of accused, himself, who was arrested on the spot.

12) Therefore, in these circumstances, this Court is of the view that this appeal has no force and the same is liable to be dismissed. The appeal is dismissed. The conviction and sentence awarded against the accused is maintained. Accused / appellant Chunnu @ Chaman Lal is on bail. His bail is cancelled. The court concerned shall take him into custody forthwith, to make him serve out the sentence, awarded against him.

(Prafulla C. Pant, J.)

Dt. October 30, 2006.

H.Negi